

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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**FILE:** B-217224

**DATE:** March 21, 1985

**MATTER OF:** J-MAR Metal Fabricating Co.

**DIGEST:**

Where bidder, a small business, fails to certify that it will furnish only products manufactured or produced by a small business concern and also certifies that it is not a manufacturer of the products to be supplied, its bid, in response to a total small business set-aside solicitation, was properly rejected as nonresponsive.

J-MAR Metal Fabricating Co. (J-MAR) protests the rejection of its low bid as nonresponsive to the small business requirements under the Department of the Navy (Navy) invitation for bids (IFB) No. N00383-84-B-0862. The IFB was issued as a total small business set-aside.

The protest is denied.

J-MAR certified in the IFB that it was a small business, but left blank the certification in the same clause that all supplies to be furnished would be manufactured or produced by a small business concern. J-MAR also certified that it was the principal manufacturer of the articles to be furnished, which would be inspected at its facility, and indicated in another clause that the place of performance would be the J-MAR Metal Fabricating Co. In the Walsh-Healey Public Contracts Act clause, J-MAR certified that it was not a manufacturer of the supplies offered. The contracting officer concluded that J-MAR's failure to certify that all supplies would be manufactured by a small business rendered the bid nonresponsive.

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J-MAR contends that its failure to properly complete the two clauses was clerical in nature and falls under Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1984). The protester asserts that its mistakes were a minor irregularity under the FAR provision and the necessary changes could have been verified by J-MAR and made by the contracting officer in the award document. J-MAR also states that it has had five contracts with the Navy and the fact that it is a small business and a manufacturer of the articles to be furnished could have been verified by the Navy through its records.


The Navy states that the contracting officer had to reject J-MAR's bid as nonresponsive because it did not include a certification that J-MAR agreed to furnish articles manufactured or produced by small business concerns as required by the FAR, 48 C.F.R. § 52.219-6 (1984), citing Jack Young Associates, B-195531, Sept. 20, 1979, 79-2 CPD ¶ 207. Without this certification, the Navy states, J-MAR was only the principal manufacturer, but could furnish the remainder from non-small business concerns. With regard to J-MAR's argument that it be allowed to correct the clerical errors, the Navy, citing Jack Young Associates, id., states that the alteration of the bid after bid opening would be tantamount to permitting the submission of a new bid.

To be responsive, a bid on a total small business set-aside must establish a bidder's legal obligation to furnish only products manufactured or produced by a small business. Atlantic Hardware & Supply Corp., B-213329, June 1, 1984, 84-1 CPD ¶ 588. A bid on a total small business set-aside must be rejected as non-responsive if it fails to indicate that the bidder will furnish only products manufactured by small business concerns. Basic Marine, Inc., B-215236, June 5, 1984, 84-1 CPD ¶ 603; Wippette International Incorporated, B-216304, Sept. 18, 1984, 84-2 CPD ¶ 322. Additionally, a bid that is ambiguous with respect to whether it represents an unequivocal offer to comply with a material requirement must be rejected as nonresponsive. Southwest Boat Corporation, B-216026, Sept. 10, 1984, 84-2 CPD ¶ 276.

In this case, J-MAR failed to certify that all supplies to be furnished would be manufactured or produced by a small business concern. In addition, in its Walsh-Healey Public Contracts Act representation, J-MAR stated that it was not a manufacturer of the supplies offered.

This certification compounded J-MAR's failure to certify that all supplies would be manufactured or produced by a small business and, at best, created an ambiguity with respect to whether the supplies would be manufactured by a small business. In these circumstances, J-MAR's bid was not an unequivocal offer to comply with a material requirement of the IFB to furnish small business products. J-MAR's bid therefore was nonresponsive and could not be corrected after bid opening. FAR, 48 C.F.R. § 48-14.406-3 (1984); Public Entity Underwriters, Ltd., B-213745, Sept. 20, 1984, 84-2 CPD ¶ 326.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel